

General Information Letter: Sale of land that is adjacent to restaurant but not used in the business is not subject to bulk sales notification.

March 8, 2000

Dear:

As a follow-up to our telephone conversation of Tuesday, March 7, 2000, you sent this office a letter, by fax, requesting a legal opinion regarding the application of the Bulk Sales provisions of the Illinois Income Tax Act to a real estate transaction with respect to which you represent the sellers. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department. For your general information we have enclosed a copy of 2 Ill. Adm. Code Part 1200 regarding rulings and other information issued by the Department. The nature of your question and the information provided require only with a GIL.

In your letter you reaffirmed the facts related in our telephone conversation and stated, in significant part, as follows:

The facts and circumstances of the transfer of this realty are as follows:

1. The owners of the realty are individuals.
2. They operated a restaurant business thereon known as xxxxxxxxxxxxxxxx.
3. The sale contemplated is only for the land. No business equipment, stock, inventory, furniture, fixtures, machinery equipment or realty of the business are being sold or transferred as part of this transaction. No part of the corporation is being transferred.
4. The owners are not in the regular business of selling real estate; nor do they own a number of parcels which they sell, transfer or trade.
5. In short, they are simply two individuals selling a parcel of land.

I would appreciate you reviewing the above and rendering a written opinion as to whether the Bulk Sales Transfer Act applies to this transaction, and whether a Bulk Sales Stop Order should issue. As I indicated, we expect to close this transaction on March 9, 2000.

The lengthy Bulk Sales provision of the IITA is set forth under Section 902(d). Generally speaking, it is in place to protect collection of revenue. With respect to certain transactions, it requires that notice containing details of the transaction to be served on the Department and that consideration, either in the form of payment or performance by the transferee, be withheld to cover "the amount of all tax, penalty, and interest due and unpaid by the seller or transferee under this Act...". Failure to comply with these bulk sales provisions can result in the purchaser or transferee being held personally liable for the amounts which

should have been withheld from the consideration "up to the amount of the reasonable value of the property acquired...".

Not all transactions require bulk sales withholding under IITA 902(d). In fact, the statute specifically states that it only impacts transfers occurring "outside the usual course of (the transferor's) business...". If the property being transferred is not an asset of a business owned and usually engaged in by the transferor, then the transaction will not be subject to bulk sales withholding.

Under a fact situation such as the one described in your letter, it is clear that IITA 902(d) bulk sales withholding is inapplicable to the subject transaction. The only business involved, the restaurant, merely happens to be sitting on the land being conveyed. The land itself, the actual consideration in the transaction, is an asset of no business being engaged in by the transferors. As a result, notice to the Department would not be required, and it would be incorrect for the Department to issue a bulk sales stop order with respect to this deal.

We trust that this GIL adequately responds to your inquiry. We are faxing you our reply and will follow that up by regular mail.

Very truly yours,

Jackson E. Donley,
Senior Counsel - Income Tax